

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

APR 21 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ACTION FINANCIAL IV, LLC,)	2 CA-CV 2009-0134
)	DEPARTMENT A
Plaintiff/Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
JEREMY GROCH,)	Appellate Procedure
)	
Defendant/Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. T20090900

Honorable Lori Jones, Judge Pro Tempore

AFFIRMED

Aron & Associates, P.C.

By Peter M. Balsino and Esther B. Simon

Tucson
Attorneys for Appellee

Jeremy Groch

Tucson
In Propria Persona

K E L L Y, Judge.

¶1 Appellant/defendant Jeremy Groch appeals from the superior court's denial of his motion to set aside a default judgment granted in justice court. Groch contends the default judgment is void because he had not been served with process. Because appellant

has not shown any reversible error, and because we presume, in the absence of a complete record, that the record supports the trial court's order, we affirm.

Background

¶2 We view the facts in the light most favorable to upholding the default judgment. *See Goglia v. Bodnar*, 156 Ariz. 12, 20, 749 P.2d 921, 929 (App. 1987). The parties agree that appellee/plaintiff Action Financial IV, LLC ("Action Financial") filed a complaint in Pima County Justice Court against appellant/defendant Jeremy Groch based on an outstanding credit card debt. The justice court granted Action Financial's motion to serve Groch by an alternate method pursuant to Rule 4.1(m), Ariz. R. Civ. P., apparently because the process server was unable to locate Groch's current address. Pursuant to this order, Action Financial served Groch by attaching a copy of the summons and complaint to the door of Groch's parents' house, as well as mailing a copy to that address, which Groch had used in the past in connection with the account. In March 2008, the justice court granted a default judgment against Groch. In March 2009, the case was transferred to superior court.

¶3 After Groch received an order to appear before the superior court for a judgment debtor's examination as provided by A.R.S. § 12-1631, he moved to vacate the default judgment and to deny transfer of the claim to superior court. After a hearing in June 2009, the superior court denied his motion to vacate the default judgment, finding he had been validly served with process. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101. *See Sullivan & Brugnattelli Adver. Co. v. Century Capital Corp.*, 153 Ariz. 78, 80, 734 P.2d 1034, 1036 (App. 1986) ("An

order setting aside, or refusing to set aside a default judgment, is appealable as a special order made after a judgment under A.R.S. § 12-2101(C).”); *see also M & M Auto Storage Pool, Inc. v. Chem. Waste Mgmt., Inc.*, 164 Ariz. 139, 141, 791 P.2d 665, 667 (App. 1990) (holding that an order denying or granting a motion to set aside a judgment pursuant to Rule 60(c), Ariz. R. Civ. P., is appealable as a special order made after final judgment).

Discussion

¶4 Groch claims the trial court erred by denying his motion to vacate the default judgment because he was not properly served with process, and the judgment therefore was void.¹ Whether to set aside a default judgment is within the sound discretion of the trial court, and we will not disturb that decision absent a clear abuse of that discretion. *Hilgeman v. Am. Mortgage Sec. Inc.*, 196 Ariz. 215, ¶ 7, 994 P.2d 1030, 1033 (App. 2000). Generally, a default judgment may be set aside in the trial court’s discretion “only when . . . the moving party has made an adequate showing . . . that it acted promptly in seeking relief from the default judgment, . . . that its failure to file a timely answer was excusable under one of the six subdivisions of Rule 60(c) . . . [and] that it had a meritorious defense.”² *United Imps. & Exps., Inc. v. Superior Court*, 134 Ariz. 43, 45, 653 P.2d 691, 693 (1982). If a judgment is void, however, it may be set

¹One of the six grounds for obtaining relief from a judgment is that the judgment was void. Ariz. R. Civ. P. 60(c)(4).

²As a second, separate issue, Groch also argues the plaintiff’s lawsuit was barred by the statute of limitations pursuant to A.R.S. § 12-543. Because we affirm the trial court’s order denying the motion to set aside the default judgment, we need not reach this issue.

aside without this showing. *Darnell v. Denton*, 137 Ariz. 204, 206, 669 P.2d 981, 983 (App. 1983). A judgment is void if the court lacks jurisdiction over the person. *Master Fin., Inc. v. Woodburn*, 208 Ariz. 70, ¶ 19, 90 P.3d 1236, 1240 (App. 2004).

¶5 The scope of review on appeal from the denial of a motion to set aside a default judgment is limited to the matters raised by the motion to set aside; we do not consider whether the trial court was substantively correct in entering the default judgment. *Hirsch v. Nat'l Van Lines, Inc.*, 136 Ariz. 304, 311, 666 P.2d 49, 56 (1983). Thus we review only the superior court's denial of the motion to set aside the default judgment on the ground that it was void and not the justice court's order granting the default judgment.

¶6 Groch has failed to provide us with a certified transcript of the superior court hearing as required by Rule 11(b)(1), Ariz. R. Civ. App. P.,³ and we have not received a copy of the record presented to the superior court or any exhibits that may have been presented at the June 2009 hearing. In his brief, Groch points to information in Action Financial's opposition to the motion to set aside default judgment, and his response to that motion. And, the parties may have intended other exhibits attached to their briefs to support their arguments, but this method of creating the record on appeal does not comply with our rules. *See In re Property at 6757 S. Burcham Ave.*, 204 Ariz. 401, ¶¶ 11-12, 64 P.3d 843, 847 (App. 2007).

³Although the record contains a notice stating Groch made arrangements for the preparation of a transcript in this matter, and both parties refer to the transcript in their briefs, no transcript was filed with this court. *See* Ariz. R. Civ. App. P. 11(b)(7).

¶7 “It is an appellant’s responsibility to include in the record on appeal ‘such parts of the proceedings as [appellant] deems necessary.’” *Id.* ¶ 11, *quoting* Ariz. R. Civ. App. P. 11(b)(1). “‘We may only consider the matters in the record before us. As to matters not in our record, we presume that the record before the trial court supported its decision.’” *Id.*, *quoting* *Ashton-Blair v. Merrill*, 187 Ariz. 315, 317, 928 P.2d 1244, 1246 (App. 1996). And, in the absence of the transcript, we must presume the record supports the trial court’s ruling. *Kohler v. Kohler*, 211 Ariz. 106, n.1, 118 P.3d 621, 623 n.1 (App. 2005); *see also* *Guide for Self-Represented Appellants and Appellees*, § V, Step 6, <http://www.supreme.state.az.us/media/pdf/oldpdfs/ProPerAppealsGuide.pdf>. Presuming the missing transcript and record support the trial court’s decision that service was valid, as we must, we cannot say the court abused its discretion in denying Groch’s motion to set aside the default judgment.

Disposition

¶8 The order denying the motion to set aside the default judgment is affirmed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge